S.B. CIVIL WRIT PETITION NO.2001/2005

Smt. Chandrakala & Anr. Vs. Om Prakash and others.

Date : 7.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sunil Beniwal, for the petitioners.

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Heard learned counsel for the petitioners.

Learned counsel for the petitioners submit that the petitioner's predecessor in title were allotted command lands way back in the year 1968 by Annexures-1 and 2. The said land was within the jurisdiction of CAD and subsequently, it has been transferred to the irrigation department IGNP. The petitioners' purchased land, though was command land, but irrigation facilities were not provided, therefore, the petitioners submitted an application before the Executive Engineer who by order dated 1.10.2004 held the land as command land and allowed the irrigation facilities to land of the petitioners. The approval was granted to the Superintending Engineer vide Annex.7 dated 19.10.2004. Some other cultivators preferred appeal against the above order of the sanction before the Superintending Engineer who is appellate authority also. The appeal of private respondent was allowed by the Superintending Engineer vide order dated 10.2.2005 by saying that the appellate authority considered the record and the arguments of both the parties and after thoughtful

consideration, the authority is of the view that whether the land is command or uncommand land is required to be examined by the Executive Engineer on the basis of the documents which may be filed by both the parties. IN pursuance of the said remand order, a notice dated 25.2.2005 was issued by the Executive Engineer but to appear on 23.2.2005 i.e. two days prior to the date when the notice was issued.

According to learned counsel for the petitioners, the order of the Superintending Engineer is a non-speaking order as no reason has been given by him for remanding the matter. It is submitted that there are sufficient material available on the record which shows that the land is command land and, therefore, the order deserves to be quashed. It is also submitted that the Executive Engineer is proceeding in a manner which clearly reveals that no full opportunity will be provided to the petitioners as the Executive Engineer fixed hearing on the date 23.2.2005 and issued notice thereafter on 25.2.2005.

I have considered the submissions of learned counsel for the petitioners.

The Superintending Engineer passed the order dated 10.2.2005 mentioning therein that he examined the record and thereafter considered the arguments of both the parties and found that the matter requires to be examined in the light of the documents to find out whether the land is

command or uncommand.

Looking to the nature of the order, I do not find any reason to interfere in the impugned order of remand merely because the order is not a detail order.

So far as the notice dated 25.2.2005 is concerned, that appears to be a notice issued under mistake and there may be error in recording the dates in the notice. However, it is made clear that the Executive Engineer will give full opportunity to the petitioner to produce all the documents and opportunity of hearing and thereafter shall pass the order. Since the notice issued to the petitioner dated 25.2.2005 fixing the date for hearing as 23.2.2005 is no notice in the eye of law, therefore, opportunity of hearing is required to be given to the petitioner.

The petitioner may appear before the Executive Engineer, Anoopgarh within a period of fifteen days from today and submit a copy of this order and the Executive Engineer will pass appropriate order in accordance with law. However, it is made clear that in case, the petitioner's irrigation facility was continuing in pursuance of the earlier order and which has not been cancelled by the appellate authority, it should not be discontinued till appropriate orders as passed by the Executive Engineer. The Executive Engineer is supposed to pass the order within a period of two months.

With the aforesaid observations, this writ petition is disposed of.

(PRAKASH TATIA), J.

S.Phophaliya